



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF D-A-A-

DATE: APR. 3, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant did not establish that he is physically present in the United States on account of a severe form of trafficking in persons. On appeal, the Applicant submits a brief and additional evidence and asserts that the Director's decision was in error. Upon *de novo* review, we will remand the matter to the Director.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that an applicant may be classified as a T-1 nonimmigrant if he or she: is or has been a victim of a severe form of trafficking in persons; is physically present in the United States on account of such trafficking; has complied with any reasonable requests for assistance in the investigation or prosecution of the trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

The term "severe form of trafficking in persons" is defined in pertinent part as "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."¹ 8 C.F.R. § 214.11(a) (2017).²

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

¹ The definition also includes sex trafficking, which is not relevant in this case.

² Shortly before the Applicant filed his T application, the Department of Homeland Security (DHS) issued an interim rule, effective January 18, 2017, amending its regulations at 8 C.F.R. § 214.11 for victims of human trafficking who seek T nonimmigrant status. *See Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92308-09 (Dec. 19, 2016).

II. ANALYSIS

The Applicant is a citizen of the Philippines who first entered the United States in April 2008 as an H-2B nonimmigrant to be employed as a housekeeper in a hotel. He filed his T application in February 2017.

A. The Applicant's Trafficking Claim

In his personal statement in support of his T application, the Applicant stated that he and his family borrowed approximately \$6000 to pay a recruitment agency in the Philippines for assistance in obtaining an H-2B visa. He recalled that after obtaining the visa, he signed an employment contract with K-D-³, the owner of a company called [REDACTED] in the United States, for a job as a housekeeper at a hotel in Florida. The Applicant noted that K-D- promised him full time work, good accommodations, and the renewal of his visa prior to its expiration, and instructed him to tell U.S. immigration officers that he was traveling to Missouri for a one-week training prior to his placement in Florida. He indicated that when he arrived in Missouri, he was taken to a motel where he shared a small room with five other people. He reported that the room was dirty, had no kitchen and only one small bed, and did not have functioning air conditioning. He stated that after a week in Missouri he had not received any type of training or orientation, the company took his passport, and he began to worry because he was running out of money and needed to begin repaying his loans in the Philippines. The Applicant indicated that he was placed in a cleaning job in Missouri instead of Florida, but did not mind because he needed to earn money. He recalled that he was required to pay \$240 per month for his housing and \$100 per month for transportation to and from work, which was unreliable and slow, and his earnings were not enough to cover his expenses and debt. He claimed that when he was too sick to work and called K-D- to request the day off, K-D- became angry, told him that he must work because no one else could cover his shift, refused to help him pay for medical care, and hung up on him. He also recalled another incident in which he called K-D- to request more hours at work and K-D- yelled at him, told him that he was lucky to have a job, and threatened to call the police and have him deported if he complained about anything again. According to the Applicant, K-D- did not renew his visa when it was time to do so, and he was forced to pay another agency in Florida to renew it. The Applicant indicated that he came to the United States to provide for his children and parents, who live in poverty in the Philippines, and would be unable to support them financially if he returned to the Philippines. He also noted that he has a U.S. citizen son, and has been living in the United States for several years and considers it his home.

In a supplemental statement in response to a 2017 request for evidence (RFE) from the Director, the Applicant claimed that he grew up in poverty in the Philippines and that his family there, including his elderly parents, nine siblings, and two daughters, are still struggling. He recalled that K-D- had promised 40 to 50 hours per week of work, overtime pay for anything over 40 hours, health insurance, a semi-furnished apartment near the job location or free transportation if the housing was far from the job location, and visa renewal for up to three years, and that he decided to incur a debt to obtain such employment because he wanted to give his family a better life. The Applicant stated that when he arrived in Missouri, a representative of [REDACTED] picked him up in the middle of the night with other new arrivals from the Philippines and took them all to the motel. He reiterated that

³ We use initials to protect identities.

the conditions in the motel were very poor, with six people living together in a room designed for two, that most people had to sleep on the dirty carpet without bedding, and that he ate only microwaveable food because the communal kitchen at the motel was dirty and had cockroaches. He claimed that after weeks passed without any training, a representative of [REDACTED] collected his passport, made him sign a document stating that his employment could be terminated at any time, and told him that he would begin working at hotels in Missouri. The Applicant recalled that he worked at a hotel on an inconsistent schedule with less than 40 hours per week, and that after paying the housing and transportation fees he had approximately \$300 per month left over, most of which he sent to his family. He stated that he ate leftover food from hotel guests in order to survive, often walked approximately five miles to and from work because the company-provided transportation did not arrive, and had to pay for transportation even if he did not use it. He recounted that because his income was insufficient to cover his loan payments, he asked K-D- if he could also seek a part time job, but K-D- told him that he would be deported if he worked anywhere else. He claimed that K-D- also stated that he had to go to work no matter what and if he did not do so he would be deported the next day, kept his passport so that he could not go anywhere else, and controlled him. According to the Applicant, [REDACTED] informed him in September 2008 that his visa would not be renewed when it expired in December, and that he would be returning to the Philippines. He recalled that he felt he could not return home because he had not repaid his debts and his family was receiving threats from the lending companies, so he found another agency to renew his visa and escaped from the Missouri motel in the middle of the night in November 2008.

According to the Applicant, the new agency that renewed his visa sent him to Louisiana to work at [REDACTED] in four-hour shifts three times per week. He stated that he was housed in an unfurnished one-bedroom apartment with nine other people, for which the agency charged him \$250 per month, and that he paid additional commuting costs. He claimed that he decided to leave that agency to seek better pay, so he relocated to Utah for a job as a live-in caregiver at an assisted living facility for seniors. He stated that he earned \$700 per month instead of the \$1200 he was promised, and attended to all of the physical, transportation, and household needs of seven or eight residents 24 hours per day, six to seven days per week, without breaks or overtime pay. The Applicant recounted that he remained in the job for a year in order to make payments toward his debts, but left after his employer told him that she would reduce his pay to \$500 per month after his visa expired and would also begin deducting fees for room and board. He stated that he then paid another agency to renew his visa in May 2009, but after he paid the agency owner never contacted him again. The Applicant claimed that he then began to feel depressed, anxious, and fearful about being out of legal status, and felt like giving up, but decided to accept his situation for the sake of his family. He reported that after his visa expired, he moved to California in 2010 to work as a live-in caregiver at another facility for seniors, where he earned \$40 per day and worked 24 hours per day, seven days per week, handling all care of the residents and also cooking meals for the family who owned the facility. He indicated that after a year, the owners told him that they would reduce his pay to \$30 per day and threatened to report his unlawful status to the police if he refused, so he left without their knowledge and went to another part of California.

The Applicant claimed that since 2011, he has worked odd jobs in order to send money home. He stated that he would be unable to support his family if he were removed to the Philippines, and that he is the only person in his family who can help his elderly parents afford medical care. He indicated

that he would be unable to obtain steady work in the Philippines due to his age, and that his ex-wife, from whom he was already separated before coming to the United States, has threatened to file a case against him if he returns. Additionally, he claimed that his U.S. citizen son has serious medical conditions, including asthma and food allergies, for which he requires medical care that the Applicant would be unable to afford in the Philippines. Finally, he stated that he wants to assist in the investigation or prosecution of his traffickers, which he would be unable to do from the Philippines.

B. The Applicant Is Physically Present in the United States on Account of Trafficking

The Director concluded that the Applicant is not physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires. The Applicant has overcome this finding on appeal.

In determining the physical presence requirement, USCIS must consider a T applicant's presence in the United States at the time the application is filed. 8 C.F.R. § 214.11(g)(1); *see also* Interim T Rule, 81 Fed. Reg. at 92273 (noting that the language of the physical presence requirement under the Act is phrased in the present tense and is interpreted as requiring "a consideration of the victim's current situation, and a consideration of whether the victim can establish that his or her current presence in the United States is on account of trafficking"). The physical presence requirement reaches an applicant who at the time of filing: (i) is currently being subjected to trafficking; (ii) was liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved; (iv) was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or (v) was allowed to enter the United States to participate in investigative or judicial processes related to the trafficking. 8 C.F.R. §§ 214.11(g)(1)(i)-(v).

The Applicant asserts on appeal that he has been unable to depart the United States since escaping from K-D- due to the financial hardship and emotional trauma that K-D- caused. He notes that he took out loans in the Philippines in order to come to the United States but has been unable to repay those loans as expected, he struggled to find work after K-D- declined to renew his visa, and he has suffered depression and anxiety which have negatively affected his ability to function.

Here, the evidence shows that the Applicant's trafficking claim falls into the scenario described at 8 C.F.R. § 214.11(g)(1)(iv) in that he was subjected to trafficking in the past and his continued presence in the United States is directly related to such trafficking. The Applicant came to the United States with an H-2B visa based on an offer of full-time employment at a hotel in Florida, along with housing and transportation. He incurred debts in the Philippines in order to secure the visa, employment, and transportation to the United States. The Applicant previously submitted, and supplemented on appeal, evidence of the job for which he was initially hired, showing that K-D- sought and obtained labor certification from the U.S. Department of Labor for the Applicant to work full time as a hotel housekeeper in Florida and indicated in writing that the Applicant would attend a one-week orientation in Missouri before being sent to his job location.⁴ Upon arriving in the United States, the

⁴ The Applicant previously submitted evidence showing that K-D- was convicted in 2010 of racketeering, participating in a Racketeer Influenced and Corrupt Organizations (RICO) conspiracy, and wire fraud for his role in using false information to acquire fraudulent work visas for foreign nationals, and then employing them in Missouri under abusive conditions through threat of deportation.

Applicant was not placed in the job for which he was hired, but was instead forced to work in poor conditions at another location, with his passport confiscated, under threat of immediate deportation if he complained about his situation or did not comply with instructions. Due to his trafficking situation, the Applicant was unable to repay his debts in the Philippines as planned, causing threats and other difficulties for his family members there, and he was unable to afford basic necessities, such as food, for himself in the United States. Furthermore, after the Applicant left K-D-'s business due to the fact that his visa would not be renewed as promised, he worked in a series of positions with low pay and abusive conditions and incurred additional unexpected costs in attempts to renew his visa through other agencies. Since arriving in the United States in 2008 to work for K-D-, the Applicant has been consistently unable to secure the type of work for which he was granted a visa, has continued in a situation of financial instability and ongoing debt, and has been unable to return to the Philippines, all of which is directly related to his trafficking.

Additionally, the Applicant previously submitted a psychological evaluation based on an interview with a licensed therapist conducted in December 2017 documenting the effect of his trafficking on his mental health condition. The therapist diagnosed the Applicant with post-traumatic stress disorder (PTSD) relating to his trafficking; trichotillomania (hair-pulling disorder), which has caused him to pull the hair from his head and beard since around 2008 due to anxiety; and major depressive disorder, severe, which interferes with his daily life. Additionally, the therapist noted that the Applicant made a plan to commit suicide in 2016, changing his mind at the last minute, attempted to commit suicide in 2009, "thinks about wanting to die on a daily basis," and "punches himself in the head consistently." The therapist found that the Applicant "poses a moderate risk to harm himself" and his desire to commit suicide would likely increase if he had to return to the Philippines, and she recommended that he receive mental health treatment. The evidence as a whole indicates that the Applicant's continued presence in the United States is directly related to his trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv).

C. Inadmissibility

The Director also noted in the denial of the T application that the Applicant may be inadmissible under section 212(a)(1)(A)(iii)(I) of the Act for health-related grounds due to his suicide attempts in 2009 and 2016. The Director did not reach this issue in detail due to the denial of the T application on another basis, but indicated that the potential ground of inadmissibility would need to be addressed in a Form I-693, Report of Medical Examination and Vaccination Record (medical examination report). The record reflects that the Applicant may be inadmissible due to his diagnosis of a mental disorder associated with harmful behavior, and we will remand this matter to the Director for further consideration of the Applicant's admissibility.

Section 212(a)(1)(A)(iii) of the Act provides that a determination of inadmissibility for a current or past physical or mental disorder associated with harmful behavior is made "in accordance with regulations prescribed by the Secretary of Health and Human Services [(HHS)]," which are found at Part 34 of Title 42 of the Code of Federal Regulations. The regulations authorize designated medical examiners, including panel physicians, civil surgeons, or other physicians designated by the Director of the Centers for Disease Control and Prevention (CDC) (or a designee approved by the Director or Secretary of HHS), to make determinations as to the presence or absence of Class A or Class B medical

conditions in determining an applicant's admissibility to the United States on health-related grounds. 42 C.F.R. § 34.4. The regulation includes as a Class A mental disorder a current or past "physical or mental disorder, and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others." 42 C.F.R. § 34.4(b)(3). The CDC's technical instructions to civil surgeons state that "[m]ental disorders most frequently associated with harmful behavior include . . . major depression," and that "harmful behavior is defined as an action associated with a mental or physical disorder that is or has caused . . . [s]erious psychological or physical injury to the applicant or to others (e.g., a suicide attempt . . .)" CDC, *Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-related Disorders for Panel Physicians*, available at <https://www.cdc.gov/immigrantrefugeehealth/exams/ti/panel/mental-panel-technical-instructions.html> (last visited Apr. 1, 2019).

On appeal, the Applicant submits a medical examination report issued in May of 2018, in which the civil surgeon indicated that the Applicant does not have any Class A or Class B physical or mental health condition. However, the medical examination report does not reflect that the Applicant informed the civil surgeon about the relevant information in the psychological evaluation he submitted, including his diagnosis of major depression, severe; his two suicide attempts; his daily thoughts about wanting to die; and self-harming behavior including "punch[ing] himself in the head consistently." Although the Applicant claims on appeal that he is not inadmissible under section 212(a)(1)(A)(iii)(I) of the Act for health-related grounds, he has not submitted sufficient evidence to address this issue. Because the Director did not reach the Applicant's inadmissibility in detail, and because we have no jurisdiction over the Director's discretionary determination of whether the Applicant merits an inadmissibility waiver, 8 C.F.R. § 212.16(c), we remand the matter to the Director for further proceedings.

III. CONCLUSION

The Applicant has overcome the Director's conclusion that he did not submit sufficient evidence to establish that he is physically present in the United States on account of a severe form of trafficking in persons. However, the record indicates that the Applicant may require a waiver of inadmissibility, and the Director did not fully address that issue in the denial decision. Accordingly, we will remand the matter to the Director for consideration of the Applicant's inadmissibility and, if applicable, his eligibility for a waiver of inadmissibility.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of D-A-A-*, ID# 2987735 (AAO Apr. 3, 2019)